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Supreme Court of the United States

October Term, 1954

No. 387

JAMES P. MITCHELL, SECRETARY OF LABOR UNITED STATES DEPARTMENT OF LABOR
Petitioner

versus

C. W. VOLLMER & CO., INC.
Respondent

On Certiorari to the United States Court of Appeals for the Fifth Circuit

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SUPPLEMENTAL BRIEF FOR RESPONDENT

EBERHARD P. DEUTSCH
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DEUTSCH, KERRIGAN & STILES

ROBERT E. LEAKE, JR.

RENÉ H. HIMEL, JR.
Of Counsel

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May it Please the Court:

In argument, respondent called the attention of the court to the inconsistency of Secretary Mitchell's position before this court in respect to the validity of the "new construction doctrine", with his public position on the subject, by which competitive bidders on public projects should have a right to be guided.

An integral part of the Secretary's argument before this court is his contention that the "new construction doctrine" has no place at all in the application of the Fair Labor Standards Act.[1]

At about the same time that he filed his brief here, arguing that work in new construction (of airports, for example) is covered under the Fair Labor Standards Act, Secretary Mitchell held a press conference, at which he was questioned as to the purport of a statement in the President's message on the State of the Union, referring to proposed revision of "8-hour laws applicable to Federal contractors".

The Secretary replied:

> "At the present time, under the law, contractors on Government projects may work their people, as some of them are, 56 hours a week on straight time and be within the present law. . . . Our revisions will make it mandatory that contractors on Government projects pay overtime over 8 hours a day or 40 hours a week."
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> * * *
>
> *Question:* "Aren't those people also subject to the Fair Labor Standards Act?"
>
> *Secretary Mitchell:* ". . . On new projects they are not. They are when they are working on alterations or repairs of existing structures. That's the difference. But on these new, big airfield projects, for example . . . they are not subject to the Fair Labor Standards Act."

[1] Petitioner's brief, pp. 21-22.

Just prior to argument herein, the proposed legislation discussed by Secretary Mitchell was introduced in the Senate [2] and in the House of Representatives.[3] The bills were referred to committee and have not as yet been reported.

Respondent respectfully submits again that if the ruling which the Secretary here seeks is to be made, it should properly come from the Congress; and that the decision under review should be affirmed.

EBERHARD P. DEUTSCH
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Of Counsel

March, 1955.

[2] Senate Bill 1204. See also S. 1285.
[3] H. R. 4566.

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